CONTRACTS—WAIVER OF BREACH BY EXECUTION OF SUBSTITUTED AGREEMENT.—Plaintiff, under a construction contract with defendant entered upon the work and had incurred large expense when the defendant notified plaintiff that it would not pay the prices agreed upon. The plaintiff under protest accepted a new and less favorable contract covering the same subject matter, insisting, however, that such new contract was merely in mitigation of damages, and not a substitution for the original contract. *Held* that plaintiff could not recover for the breach of the first contract. *McCabe Const. Co.* v. *Utah Const. Co.* (D. C. Ore. 1912), 199 Fed. 976.

The court reached its conclusion by assuming that the second contract between the parties covering the same subject matter was a valid contract. Is this true? It cannot be true unless the second contract operated as a rescission of the first. Unless the first contract was rescinded there was no consideration for the second, because it was an agreement to do what the parties were already legally bound to do. The intention to discharge the original contract must clearly appear. Implication of an intention to discharge the original contract from the execution of a new agreement, even though the terms of the new agreement are inconsistent with the original, has been generally repudiated. *Endriss* v. *Belle Ice Co.*, 49 Mich. 279; *King* v. *Duluth M. & N. Ry. Co.*, 61 Minn. 482; *Goldsborough* v. *Gable*, 140 Ill. 269, 29 N. E. 722; *Eblin* v. *Miller*, 78 Ky. 371; *Lingenfelder* v. *Brewing Co.*, 103 Mo. 578, 15 S. W. 844.

CORPORATIONS—IMPLIED AUTHORITY OF GENERAL MANAGER.—The defendant corporation was engaged in the business of buying and selling farm lands and used automobiles in conveying prospective purchasers to and from the lands; its president, who was also its general manager, purchased from the plaintiff a limousine motor car, and in payment for the same gave the corporation's note, executed by himself as president. The car was used a few times in the company's business, and was used by the general manager and his wife. The purchase was neither authorized nor expressly ratified by the directors of the company, and the by-laws limited the authority of the general manager to make contracts of purchase to amounts less than $1,000. The plaintiff had no notice of the by-law. The lower court directed a verdict for the plaintiff and defendant appealed. *Held*, that the extent of the general manager's authority, the implied ratification of the purchase by the company, and the purpose for which the car was bought by the general manager were questions of fact for the jury. Reversed and remanded for a new trial. *Western Investment & Land Co.* v. *First National Bank* (Col. 1912) 128 Pac. 476.

The rule is general that no managing agent of a corporation, except the cashier of a bank, possesses implied power to bind it by issuing, accepting, or indorsing in its behalf negotiable instruments. *Baines* v. *Coos Bay Navigation Co.*, 45 Ore. 307, 77 Pac. 400; 10 CYC. 929; 3 CLARK & MARSHALL, CORP., § 700; 3 COOK, CORP. (Ed. 6), § 719. An officer having the general management of the corporate business has power to make the usual and necessary contracts reasonably incident to the corporate business; and

such authority may be inferred from the conduct of the directors or their knowledge of the facts and failure to object. 2 THOMP., CORP. (Ed. 2) 1576; 3 CLARK & MARSHALL, CORP., § 700; *Barber* v. *Stromberg Co.*, 81 Neb. 517, 116 N. W. 157; *Lowe* v. *Ring*, 115 Wis. 575, 92 N. W. 238. The corporation was held bound where it had been the custom of the general manager to execute notes with the knowledge of the officers and stockholders, and payments had been made by the corporation. *Cadillac State Bank* v. *Cadillac & Co.*, 129 Mich. 15, 88 N. W. 67. A person who enters into a contract with a corporate officer or agent, knowing he is not acting for the corporation, cannot of course hold the corporation liable in contract. 10 CYC. 942; *Patten* v. *Climax Quick Tanning Co.*, 40 N. Y. App. Div. 607, 57 N. Y. Supp. 758. The rule is the same where the circumstances put one on inquiry. *Wheeler* v. *Home Savings Bank*, 188 Ill. 34, 58 N. E. 598, 80 Am. St. Rep. 161; *Moores* v. *Citizens' Bank*, 111 U. S. 156; *Wilson* v. *M. E. R. Co.*, 120 N. Y. 145. But persons contracting with such corporation are not bound to know of a by-law thereof limiting the apparent authority of suoh manager. *Standard Fashion Co.* v. *Seigel-Cooper Co.*, 44 N. Y. App. Div. 121, 60 N. Y. Supp. 739; *Barber* v. *Stromberg, supra.* The legitimate authority of a general manager, in the absence of known limitations, must depend largely upon the circumstances of each particular case and usually presents a question of fact for the jury. *Grand Rapids Elec. Co.* v. *Walsh Mfg. Co.*, 142 Mich. 4, 105 N. W. 1; *Colorado Springs Co.* v. *American Pub. Co.*, 97 Fed. 843, 38 C. C. A. 433.

CORPORATIONS—TRANSFER OF STOCK—RIGHTS OF AN ATTACHING CREDITOR AS AGAINST AN UNREGISTERED TRANSFEREE.—G, the owner of the stock in question, transferred it to F in satisfaction of a debt. Later C, another creditor of G, attached the stock, obtained judgment, and on execution became the purchaser of the stock. The stock was transferred on the books of the company to C before F had requested a transfer to him. The question arose as to which had the better title and consequently the right to vote the stock. *Held,* that the rights of F, the unregistered transferee, were superior to those of C, the attaching creditor. *Flostroy* v. *Wm. B. Corby Coal Co. et al.* (N. J. 1912) 85 Atl. 578.

On this question the courts are about evenly divided and it is impossible to reconcile the decisions. In 9 MICH. L. REV. 258 may be found a list of the states on each side of the question with a citation from each state. In support of the principal case probably the leading case is *Broadway Bank* v. *McElrath*, 13 N. J. Eq. 24, 2 WILGUS, CAS. 1663. The leading case holding the opposite view is *Fisher* v. *Essex Bank*, 5 Gray (Mass.) Rep. 373, 2 WILGUS, CAS. 1668. An interesting note containing many citations on both sides of the question may be found in 2 WILGUS, CAS. 1673. There is also an interesting article on the question in 9 COL. L. REV. 433.

CRIMINAL LAW—NUMBER OF CHALLENGES ALLOWED JOINT DEFENDANTS.—Three defendants were charged with the crime of perjury. Upon a joint trial one was acquitted. The two who were convicted appeal and allege as error that the three defendants were confined to the same number of peremptory challenges of jurors as if there had been but one defendant. The